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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,515	01/31/2002	Majid Zia	1-14873	3658
1678 7590 10/29/2008 MARSHALL & MELHORN, LLC FOUR SEAGATE - EIGHTH FLOOR TOLEDO, OH 43604				
EXAMINER				
BRINSON, PATRICK F				
ART UNIT		PAPER NUMBER		
3754				
MAIL DATE		DELIVERY MODE		
10/29/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/066,515

Applicant(s)

ZIA ET AL.

Examiner

Patrick F. Brinson

Art Unit

3754

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-24, 27-30, 36 and 59-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27-30 is/are allowed.
- 6) ☒ Claim(s) 20-24, 36 and 59-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 27 is still indefinite in reciting "...the means comprising the channel having at least a semi-circular cross-section, with adhesive being used if the cross-section is of a substantially semi-circular cross section..." It should be noted that the claim recites "semi-circular" in both instances; where adhesive is used and when adhesive is not used. Applicant defines at least semi-circular as semi-circular or greater, while the specification discloses, pages 16 and 23, that the tubing is held in slight compression due to its having a less than semi-circular cross section, so therefore, is not clear how without adhesive, how tubing is held by the channel having at least a semi-circular cross-section.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-24, 36 and 59-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over 6,001,081 to **Collen**.

The patent to **Collen** discloses a tubing device which is capable of being weight bearing, wherein it is formed of a hard injection molded plastics material, including polypropylene or polyethylene, and has an opening within the U-shape that would allow it to be hung in conjunction with an intravenous or drip tubing arrangement. The tubing device including a tube support comprising, when closed, a curvilinear channel of substantially circular cross-section disposed therein for receiving and holding a piece of tubing (40), and having a U-shape or horseshoe shaped, wherein the tube support comprises a first portion (12) and a second portion (14) with each portion comprising a channel of semi-circular cross section and being connected by hinge (16). The channels are configured to align with each other to hold the tubing between them. Fig. 4 discloses that when the tube support is closed, the channels are configured to form a cylindrical channel when aligned thus forming a curvilinear channel of substantially circular cross-section, fig. 4. **Collen** does not specifically disclose the channel contacting the piece of tubing shown in fig. 4 as substantially around its entire periphery. **Collen**, however does disclose that channel dimensions as well as the radius of curvature may be changed to accommodate different sized tubing. Additionally the size of the tubing may increase to a diameter at which time the channels would contact the tubing substantially around the entire periphery. It

would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the channels and or the tubing as taught by **Collen** in order for the channels to substantially contact the tubing about its entire periphery. With regard to the limitations recited in claims 60 and 62, **Collen** discloses the tubing device but does not disclose the curvilinear channel having a shape other than U-shaped or a partially S-shape. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to form the channel of any shape other than U shape because Applicant had not disclosed that such a modification provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with a U-shape, a partially S shape or any desired shape in order to direct the tube to a desired location. Therefore, it would have been an obvious matter of design choice to modify the device of **Collen** to obtain the invention as specified in claims 60 and 62.

Response to Amendment

3. As pointed out in preceding paragraph #1, claim 27 is still indefinite in reciting the means for holding a piece of tubing is the channel having at least a semi-circular cross section, with adhesive being used if the cross section is of a substantially semi-circular cross section. Applicant states that at least a semicircular cross section means

that a channel has a semi circular or greater cross section. It's indefinite in that semi-circular is utilized in both arrangements; i.e., means for holding is the channel if it's semi-circular or greater, and adhesive is used if it is semi-circular. Additionally, it is not clear how the channel holds the tubing if the channel is semi-circular or greater when the specification states, pages 16 and 23, that the tubing is held in slight compression due to its having a less than semi-circular cross section. Simply reciting that the means for holding the tube comprises the channel having at least a semi-circular cross section is not clear.

Applicant argues that a key feature of the **Collen** device is clearance to accommodate the tubing. It is pointed out that the clearance is to prevent the tubing from kinking, however the reference goes on to say that the propensity of the tubing to kink depends on a number of factors, including the material from which the tubing is made, the wall thickness of the tubing, and the temperature of the tubing. Applicant argues that eliminating the clearance will materially affect the operation of the device, however, the device itself could accommodate a larger tubing and would contact the tubing substantially around its entire periphery if placed therein. It should also noted that no where does specification of the present invention mention that the two halves would contact the tubing substantially about its entire periphery, and therefore does not disclose any particular importance or advantage of this feature over the prior art. Likewise with regard to the channel to have any configuration other

than a U-shape, the specification is silent as to any particular problem solved or advantage over the prior art, and therefore this feature is considered to be ornamental and obvious to one of ordinary skill in the art wherein one skilled in the art would modify the prior art device to have inlets and outlets to guide the tubes in specific directions.

Allowable Subject Matter

4. Claim 27 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
5. Claims 28-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory

period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kevin P. Shaver** can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patrick F. Brinson/
Primary Examiner, Art Unit 3754

P. F. Brinson
April 3, 2008